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### REMARKS

Claims 1, 3-5, 7-10, 12-46 and 48-114 are pending in the present application.

Applicants respectfully request reconsideration of the application in light of the remarks below.

#### Claim Rejections under 35 U.S.C. § 103(a)

In the Office Action, claims 91 and 96-98 were rejected under 35 U.S.C. §103(a) as being unpatentable over Sundelin et al. (U.S. Patent No. 6,144,861), hereinafter referred to as Sundelin, in view of Shibutani (U.S. Patent No. 6,940,824). Claims 92-95 were rejected under 35 U.S.C. §103(a) as being unpatentable over Sundelin, in view of Shibutani as applied to claim 91, and in further view of Gunnarsson et al. (U.S. Patent No. 6,493,541), hereinafter referred to as Gunnarsson. Claim 99 was rejected under 35 U.S.C. §103(a) as being unpatentable over Sundelin, in view of Shibutani as applied to claim 91, and in further view of Higley et al. (U.S. Patent No. 5,224,105), hereinafter referred to as Higley. Applicants respectfully traverse the rejection.

In FIG. 4 of Sundelin as cited by the Examiner in the Office Action, mobile station (MS) generates a signal-to-noise ratio (SIR) in SIR unit 92. A difference is determined between an SIR reference value and the detected SIR value in SIR unit 92 by differencer 94, which is then used to generate a TPC bit by transmit power controller 88 (see Sundelin, col. 7, lines 46-54). The Examiner also cited a section in Sundelin as disclosing power control on the reverse link to decrease unnecessary interference (see col. 2, lines 8-19).

Table 2 in Shibutani, as cited by the Examiner in the Office Action, shows relationships between SIRs and maximum data rates.

In contrast, claim 91 is directed to an apparatus configured to use a transmit power margin to modify a quality metric, and determine a maximum data rate in accordance with the modified quality metric. Applicants respectfully submit that claim 91 as recited is not taught or suggested by Sundelin or Shibutani, alone or in combination, and is therefore patentable over the cited references. Applicants respectfully request that the rejection of claim 91 be withdrawn.

Claims 92-99 each depend from independent claims 91, and are therefore allowable as well. Applicants respectfully request that the rejections of these claims be withdrawn.

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### REQUEST FOR ALLOWANCE

In view of the foregoing, Applicants submit that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

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